THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.10988 of 1996

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Date: 16-02-2006

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Between:

Kolli Jagannadham,

Son of Appayya alias Panduvadu,

Aged 54 years, Dafedar,

District Cooperative Central Bank,

Srikakulam, Srikakulam district.

…Petitioner

And

1. The District Collector, (Social Welfare)

Srikakulam and another.

…Respondents.

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ORDER:

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Claiming that he is the owner of Ac.0=44 cents in S.Nos.181/9 and 7 of Patrunivalasa village and had constructed a stone compound wall around that site and had laid foundation for a two portioned house therein and also raised a temporary shed by spending huge amounts as he intends to reside in that place with his wife, 4 sons and two daughters and had also dug a 34 feet deep well

with 4 feet diameter and reared fruit bearing trees i.e., 49 Coconut trees, 34 Thumma trees, 5 Palmyrah trees, 2 Jami trees, 1 Supota tree, 2 Molimi trees, 2 Soapnut trees, 1 Mango tree and 2 Neem plants in that site and had seen the publication in the newspaper dated 15.3.1996 that that land along with other lands is being acquired for the purpose of providing house sites to weaker sections of society, without making a mention about the compound wall, shed, motor, trees, obviously with a view to avoid payment of proper compensation, by dispensing with enquiry under Section 5-A of the Land Acquisition Act (the Act), petitioner filed this petition alleging that the proposed acquisition of his land is *mala fide* and hence, is liable to be set aside.

2. On behalf of respondents, the Revenue Divisional Officer cum Land Acquisition Officer i.e., second respondent, filed his counter-affidavit *inter alia* admitting that a total extent of Ac.10-59 cents in various survey numbers, including that of the petitioner, was proposed to be acquired for providing house sites to weaker sections of society and denying the contention of the petitioner that he only owns Ac.0-44 cents, and contending that he owns a total extent of Ac.5-77 cents, including Ac.0-44 cents proposed to be acquired, in various survey numbers, and also denying the allegations regarding existence of a compound wall and other structures and trees and contending that some structures were raised in the year 2002, taking advantage of the continuance of stay granted in W.P.M.P.No.13338 of 1996 on 08-08-1996, and contending that the allegation that compound wall and about 100 trees as mentioned in the affidavit of the petitioner were in existence on the date of issuance of the Declaration under Section 6 of the Act is not true and that only a stone foundation was in existence at the time of publication of the declaration under Section 6 of the Act and that the structure and trees that were actually existing in the land were mentioned in the declaration under Section 6 of the Act and the enquiry under Section 5-A of the Act was dispensed with taking into consideration the urgency involved and so, the petitioner is not entitled to any relief.

3. The contention of the learned counsel for the petitioner is that inasmuch as the petitioner is an employee and was to retire on 08th February 2002, he, with

a view to settle down in his village was making preparations for construction of a house in the site proposed to be acquired from him and had raised a compound wall and planted several trees and since there are no valid grounds for dispensing with the enquiry under Section 5-A of the Act, the proceedings to acquire the land of the petitioner are liable to be quashed.

4. The contention of the learned Assistant Government Pleader is that since the land of the petitioner is a part of Ac.10-59 cents of land proposed to be acquired, petitioner, with a view to claim higher compensation or otherwise, filed this petition to forestall the respondents by falsely alleging that he constructed a compound wall and began construction of the house, and by falsely claiming that several fruit bearing trees are in existence in that site and since the declaration under Section 6 of the Act was made only after verification of the structures and trees existing in the lands proposed to be acquired and since the petitioner is not a small farmer and has several other lands mentioned in page 2 of the counter-affidavit of second respondent, there are no grounds to quash the proceedings.

5. At the time of admission of writ petition a learned judge of this Court by his order dated 08.08.1996 in W.P.M.P.No.13338 of 1996, granted interim stay of further proceedings including taking possession of the lands of the petitioner. That stay is still in operation.

6. Second respondent filed his counter-affidavit only on 23rd November 2004 i.e., about 8 years after the filing of the writ petition. What are the varieties of trees and their number, at the time of filing of the petition is a question of fact. The allegation in the affidavit of the petitioner relating to the number of trees and the structures therein is disputed in the counter affidavit of the second respondent. Since disputed question of fact cannot be gone into and decided in this petition, no finding can be given regarding the existence of structures and the number of trees in the land of the petitioner at the time of publication of the declaration under Section 6 of the Act more so because compound wall would usually be constructed after construction of the building but not before construction of the building. Be that as it may, in order to have unimpeachable

evidence with regard to the existence of structures and the trees as on the date of filing of the petition, petitioner who sought stay of further proceeds, could have also sought for appointment of a commissioner to note the existing features i.e., the structures and the number and variety of trees in his land which is proposed to be acquired, but he for the reasons best known to him, did not file such a petition. He also did not file a reply affidavit to the counter-affidavit filed by the second respondent.

7. Since the land of the petitioner is only a part of Ac.10-59 cents proposed to be acquired for the purpose of providing house sites to weaker sections of the society, and since the petitioner is said to be the owner of the other lands, proposed acquisition of the land of petitioner cannot be said to be a *mala fide* and so proposed acquisition of the land of petitioner cannot be quashed merely on the basis of the allegations in the affidavit of the petitioner.

8. Since the Apex Court in **Union of India Vs. Mukesh Hans** held that inasmuch as an enquiry under Section 5-A of the Act is a valuable right of the land-holder, dispensation of that enquiry cannot be resorted to as a matter of routine, unless there really is a pressing urgency, which cannot brook the delay of even a few days time required for holding of the enquiry under Section 5-A of the Act, it has to be seen whether the facts in this case justify dispensation of enquiry under Section 5-A of the Act.

9. Admittedly possession of the lands of petitioner, proposed to be acquired, is not taken over till today, though declaration under Section 6 of the Act was published in 1996. Respondents did not either seek vacation of stay passed in this case, nor did they file counter affidavit immediately showing any sign of urgency. So it is clear that there actually was no urgency to take over possession of the land of the petitioner. So I feel that this is a fit case to direct holding an enquiry under Section 5-A of the Act in respect of the land of petitioner.

10. Therefore, I dispose of this petition with a direction to the respondents to

hold the enquiry under Section 5-A of the Act in respect of the lands of the petitioner, proposed to be acquired from him and take further steps. No costs.

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C.Y.SOMAYAJULU, J.

Date: 16th February 2006.

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